

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Biennial Regulatory Review — Amendment)
of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95,)
97, and 101 of the Commission's Rules to)
Facilitate the Development and Use of the)
Universal Licensing System in the Wireless)
Telecommunications Services)

WT Docket No. 98-20

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

BELLSOUTH REPLY COMMENTS

BellSouth Corporation ("BellSouth"), on behalf of its wireless affiliates and subsidiaries, hereby replies to comments regarding the Commission's proposed Universal Licensing System ("ULS"). *Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, WT Docket 98-20, *Notice of Proposed Rulemaking*, FCC 98-25 (March 18, 1998), summarized, 63 Fed. Reg. 16938 (1998) ("NPRM").

I. THE RECORD DOES NOT SUPPORT THE COMPLETE ELIMINATION OF PAPER FILINGS

In its initial comments, BellSouth praised the Commission's efforts to reduce paperwork and institute its ULS proposal but cautioned against eliminating paper filings entirely. BellSouth Comments at 7-9. The record supports BellSouth's position.¹ Numerous commenters demonstrated

¹ See AirTouch Communications ("AirTouch") Comments at 4; ADT Security Systems, Inc. ("ADT") Comments at 2-4; Alarm Industry Communications Committee ("AICC") Comments at 2-4; American Radio Relay League, Inc. ("ARRL") Comments at 17; American Mobile Telecommunications Association, Inc. ("AMTA") Comments at 3-4; Century Telephone Enterprises, Inc. ("Century") Comments at 2-4; National Spectrum Managers Association ("NSMA") Comments at 2-3; SBC Communications, Inc. Comments at 6-8; Paging Network, Inc. Comments at 6; David B. Popkin Comments at 1; Myers Keller Communications Law Group ("MKCLG") Comments at

that the ULS cannot possibly cover all filing scenarios and that the ability to file paper applications should be retained. *See, e.g.*, Association of Public-Safety Communications Officials-International, Inc. ("APCO") at 3-4; Federal Communications Bar Association ("FCBA") Comments at 4-5; Small Business in Telecommunications ("SBIT") Comments at 2. The record also demonstrated that prohibiting paper filings may unduly burden small businesses and rural or inner-city licensees. *See* ARRL Comments at 17; FCBA Comments at 9; Forest Industries Telecommunications ("FIT") Comments at 5-6; TIA Comments at 8; SBIT Comments at 14-16. Accordingly, ULS filing should not be mandatory.

At a minimum, the Commission should clarify that paper applications will be accepted in the event the ULS crashes, is overloaded or unreachable, or is otherwise off-line. *See, e.g.*, ADT Comments at 2-3; AT&T Wireless Services, Inc. ("AT&T") Comments at 8; Bell Atlantic Mobile, Inc. ("BAM") Comments at 6; Century Comments at 3; PCIA Comments at 4-5; SBC Comments at 7; SBIT Comments at 2-3, Exhibit 1. For example, the Commission's current system for accessing records, the Record Imaging Processing System, has experienced a number of crashes. *See* SBIT Comments at 2-3, Exhibit 1. Commenters also referenced a number of other situations in which FCC computer systems have had problems which impeded the ability to file applications. *See* American Automobile Association ("AAA") Comments at 2-3; ADT Comments at 2-3; AICC Comments at 2-3; Century Comments at 2-3; PCIA Comments at 4-5. Moreover, the Commission recently took ULS offline for a major upgrade. *See* FCC Public Notice, DA 98-994 (May 26, 1998). It is likely that the system will be down for upgrades in the future, especially during implementation. In this regard, the transition period proposed by the Commission should be lengthened to give both

2-3; Comments of Fixed Point-to-Point Communications Section, Wireless Communications Division, Telecommunications Industry Association ("TIA") at 8; Paging Network, Inc. ("PageNet") Comments at 6; Bennet & Bennet, PLLC Comments at 4.

the FCC and the public an opportunity to assess the stability and viability of the ULS.² Parties should be entitled to make paper filings whenever the ULS is down or otherwise inaccessible.³ The Commission also should make clear that parties have a seven day grace period in which to submit such paper applications. Finally, the Commission should permit parties to file paper requests in special circumstances requiring expedited Commission action (*e.g.*, requests for special temporary authority). *See* FCBA Comments at 24; FIT Comments at 10-11; GTE Comments at 11-13.

II. THE RECORD DOES NOT SUPPORT ADOPTION OF THE COMMISSION'S PROPOSED DEFINITION OF MAJOR ACTIONS

A number of parties took issue with the Commission's proposals to treat as major actions any proposal that results in a frequency change or requires FAA notification. *See* BellSouth Comments at 11-14; AirTouch Comments at 7-8; BAM Comments at 9; GTE Comments at 2-11; SBC Comments at 9. The requirement that the FCC be notified of frequency changes within cellular systems was eliminated in CC Docket No. 92-115 and no justification has been provided for reimposing the requirement.⁴ Likewise, BellSouth noted that procedures for frequency coordination between PCS systems have been developed by industry bodies such as the National Spectrum Managers Association and the Telecommunications Industry Association. BellSouth Comments at 13.

² *See* BellSouth Comments at 7-8; AAA Comments at 2-4; AirTouch Comments at 3-4; AMTA Comments at 4; American Petroleum Institute ("API") Comments at 6; BAM Comments at 6-7; FCBA Comments at 7-9; FIT Comments at 6, 10; MKCLG Comments at 2-3; Nextel Communications, Inc. ("Nextel") Comments at 3; TIA Comments at 8; Winstar Communications, Inc. Comments at 3-4.

³ For example, when the system is inaccessible due to telephone network congestion or disruption. Parties also should be entitled to file paper applications if there are problems with the filer's computer system or they are unable to access their computer system. *See* NSMA Comments at 2.

⁴ *Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, CC Docket No. 92-115, *Report and Order*, 9 F.C.C.R. 6513 (1994).

BellSouth and others demonstrated that cellular and PCS systems change frequencies dynamically. BellSouth Comments at 12; GTE Comments at 2-3; SBC Comments at 10-11. The switches in these systems automatically change frequencies at sites based on usage and other factors.

The Commission's proposal would prevent efficient spectrum usage because automatic frequency changes and "frequency hopping," a technique used to "average out" propagation and interference effects, would no longer be feasible.⁵ The proposal also is inconsistent with the deregulatory nature of this proceeding⁶ — GTE estimated that the Commission's proposal would require many cellular licensees to make hundreds of additional filings a year. GTE Comments at 3.

The proposal to treat all actions requiring FAA notifications as major actions is also inconsistent with the deregulatory nature of this proceeding because it would impose new filing obligations on cellular and PCS licensees. *See* BellSouth Comments at 13-14; AirTouch Comments at 7-8; BAM Comments at 9; GTE Comments at 4-11; SBC Comments at 9. The FCC claims that its proposal is based, in part, on the need to preserve safety in air navigation. *NPRM* at ¶78. As the rule itself acknowledges, however, the FAA already must be notified of the proposed construction in order to assess air safety concerns.⁷ Pursuant to Part 17 of the Commission's rules, a Form 854

⁵ It would be impossible to file an application for each frequency change in a system using frequency hopping because frequencies change more than 200 times *per second* at sites in these systems. BellSouth Comments at 12; SBC Comments at 10-11.

⁶ This proceeding was initiated under Section 11 of the Communications Act, 47 U.S.C. § 161. *NPRM* at ¶ 8. Consistent with Section 11, the Commission's "goal in this proceeding is . . . to establish a simplified set of rules that (1) minimizes filing requirements as much as possible; (2) eliminates redundant, inconsistent, or unnecessary submission requirements; and (3) assures ongoing collection of reliable licensing and ownership data." *Id.*

⁷ The Commission's proposed rule would require an FCC filing if FAA notification would be triggered by a proposed new site or site modification. *See* proposed rule 47 C.F.R. § 1.929(b); *see also* 47 C.F.R. § 17.7.

also must be filed with the FCC registering any site requiring FAA notification. 47 C.F.R. § 17.4. Thus, the current proposal simply imposes a duplicative filing obligation without any justification.

III. THE ULS SHOULD BE DESIGNED TO ENSURE CONFIDENTIALITY, YET ALLOW MULTIPLE AUTHORIZED PARTIES TO REVIEW DRAFT APPLICATIONS

If the ULS is to be implemented, even on a voluntary basis, the system should be designed to allow applicants to print draft applications and to ensure the confidentiality of draft applications.⁸ Many companies use outside consultants and attorneys as part of the application preparation process. Accordingly, the ULS should permit applicants to draft applications and print them for review by consultants and outside counsel prior to filing. *See* AAA Comments at 5; ADT Comments at 5; AICC Comments at 5-6; Century Comments at 5. ULS should also enable applicants to permit more than one person to access draft applications simultaneously. The record demonstrates that these capabilities may not currently exist. SBIT Comments at 2, n.2.

The ULS also should keep all draft information confidential. Information in applications not formally *filed* with the Commission remains the proprietary, nonpublic property of the applicant. Public disclosure of such information, even inadvertently, could have serious competitive consequences for the company involved and could also facilitate securities law violations. *See* BellSouth Comments at 9-11; Century Comments at 7; FCBA Comments at 15-16.

IV. THE COMMISSION SHOULD ADOPT BELL SOUTH'S PROPOSED MODIFICATIONS TO THE ENVIRONMENTAL RULES

The Commission's ULS proposal incorporates environmental issues into ULS forms and proposes to require technical information whenever an Environmental Assessment ("EA") is needed. *NPRM* at ¶ 78; proposed rule 47 C.F.R. § 1.923(e). Given that the Commission's "goal in this

⁸ As stated in its initial comments, the Commission also should permit parties to file manually if confidential information would be included with the filing. BellSouth Comments at 9.

proceeding is . . . to establish a simplified set of rules that minimizes filing requirements as much as possible,” BellSouth urged the Commission to streamline its environmental rules with regard to floodplains, rather than merely incorporate them into the ULS rules. *NPRM* at ¶ 8; BellSouth Comments at 19-24. BellSouth’s proposal is consistent with informal requests made by industry representatives over the last few years.

BellSouth demonstrated that sites located in floodplains need not trigger the preparation and submission of an EA to the Commission. There are less restrictive, more practicable means available to ensure that harm to floodplains is minimized. For the reasons referenced in its comments, the Commission should modify its rules to exempt FCC licensees from having to file a Form 600/EA application for the construction of sites located in floodplains *if* the licensees obtain approval for such construction from local authorities participating in the National Flood Insurance Program. BellSouth Comments at 19-24.

V. THE COMMISSION SHOULD NOT REQUIRE LICENSEES TO CONVERT SITE COORDINATE DATA ALREADY ON FILE WITH THE COMMISSION TO NAD83

Most commenters concur with the Commission’s proposal to begin using NAD83, provided the conversion to NAD83 does not burden existing licensees significantly. *See, e.g.*, BellSouth Comments at 19; BAM Comments at 14; Century Comments at 7; Comsearch Comments at 5; Nextel Comments at 8; PageNet Comments at 6; PCIA Comments at 10-11; SBC Comments at 15. In this regard, the Commission should convert to NAD83 only after it has completely converted its existing database from NAD27 to NAD83. BAM Comments at 14; Century Comments at 7; Nextel Comments at 8. After the FCC’s database has been converted, there should be a transition period during which FCC licensees can submit site coordinate data in either format. *See* Century Comments at 7; Comments of Brown and Schwaninger at 10; PCIA Comments at 11. The ULS

should then automatically convert all coordinate data to NAD83. *See* Comments of Brown and Schwaninger at 10; FIT Comments at 17; PCIA Comments at 11.

Moreover, BellSouth concurs with SBC that the Commission should not change its current policy that site coordinate data be rounded to the nearest whole second. *See* SBC Comments at 15. Should the Commission determine that more specific data is necessary, it should be gathered consistent with FAA requirements.⁹

VI. THE COMMISSION SHOULD PROVIDE NOTIFICATIONS VIA BOTH E-MAIL AND U.S. MAIL

The Commission was generally lauded for its desire to provide E-mail notifications to licensees and applicants, provided such notifications are also provided in the traditional paper format.¹⁰ Electronic notifications can expedite notification of FCC action and facilitate any necessary responses, but there also are inherent problems with E-mail. *See, e.g.,* BellSouth Comments at 25-26; Century Comments at 6-7. Accordingly, the Commission should provide notifications by both E-mail and U.S. mail. Providing E-mail notifications in addition to the current paper notifications should not impose a significant burden on the FCC.

⁹ FAA forms specify that coordinates be rounded to the nearest hundredth of a second. It makes no sense for the Commission to require coordinates to be rounded to the nearest tenth of a second, as proposed. *See* proposed 47 C.F.R. § 1.923; SBC Comments at 15.

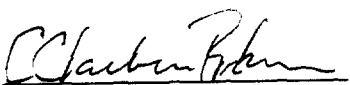
¹⁰ BellSouth Comments at 25-26; AAA Comments at 7; ADT Comments at 7; AICC Comments at 7; B&B Beepers Comments at 9; Century Comments at 6-7; Electronic Engineering Company Comments at 9; Metamora Telephone Company, Inc. Comments at 9; Paging Associates, Inc. Comments at 9; PCIA Comments at 6-8; Porter Communications, Inc. Comments at 9; Rinkers Communications Comments at 9; Superior Technologies Comments at 9.

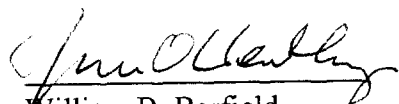
CONCLUSION

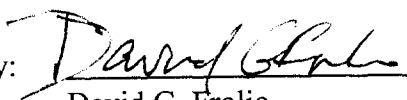
As stated above and in its initial comments, BellSouth generally supports the Commission's undertaking to revise and streamline its wireless application rules but urges the Commission to revise its proposals consistent with the deregulatory nature of the proceeding.

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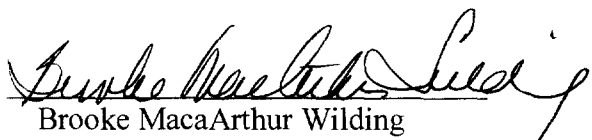
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